97-84023-5

Guaranty Trust Company of New York

War excess profits tax law

New York

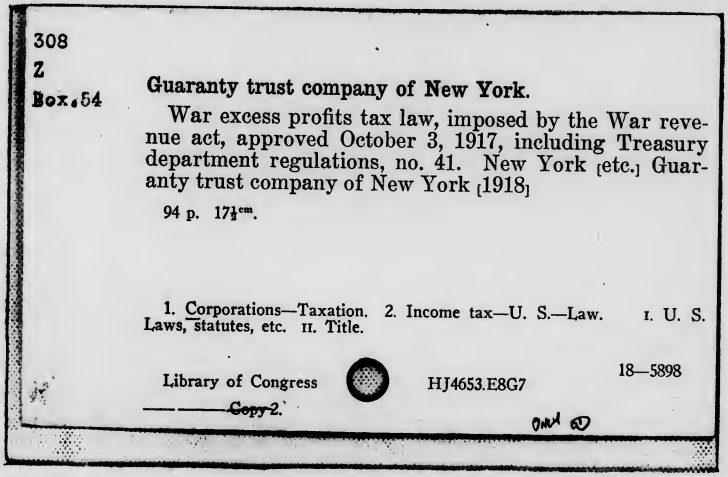
[1918]

97-84023-5
MASTER NEGATIVE #

COLUMBIA UNIVERSITY LIBRARIES
PRESERVATION DIVISION

BIBLIOGRAPHIC MICROFORM TARGET

ORIGINAL MATERIAL AS FILMED - EXISTING BIBLIOGRAPHIC RECORD



308
Z
Box.54

Guaranty trust company of New York.

War excess profits tax law, imposed by the War revenue act, approved October 3, 1917, including Treasury department regulations, no. 41. New York [etc.] Guaranty trust company of New York [1918]

94 p. 17½cm.

1. Corporations—Taxation. 2. Income tax—U. S.—Law. I. U. S. Laws, statutes, etc. II. Title.

Library of Congress HJ4653.E8G7 18—5898

~~Copy 2.~~

TECHNICAL MICROFORM DATA

FILM SIZE: 35mm REDUCTION RATIO: 9:1 IMAGE PLACEMENT: IA (IIA) IB IIB

DATE FILMED: 2-12-97 INITIALS: MS

TRACKING # : 21264

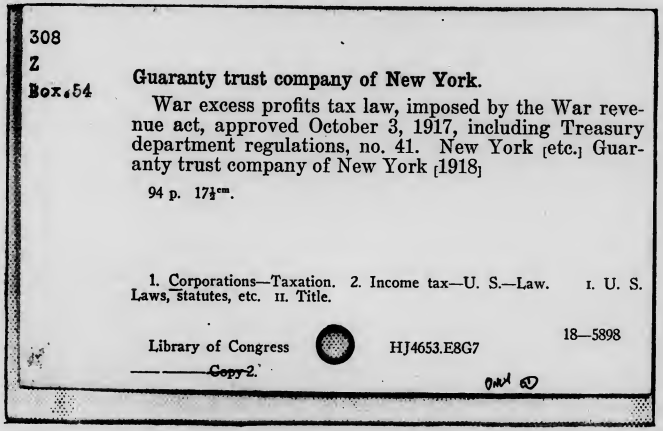
FILMED BY PRESERVATION RESOURCES, BETHLEHEM, PA.

97-84023-5
MASTER NEGATIVE #

COLUMBIA UNIVERSITY LIBRARIES
PRESERVATION DIVISION

BIBLIOGRAPHIC MICROFORM TARGET

ORIGINAL MATERIAL AS FILMED - EXISTING BIBLIOGRAPHIC RECORD



308
Z
Box 54

Guaranty trust company of New York.

War excess profits tax law, imposed by the War revenue act, approved October 3, 1917, including Treasury department regulations, no. 41. New York [etc.] Guaranty trust company of New York [1918]

94 p. 17½cm.

1. Corporations—Taxation. 2. Income tax—U. S.—Law. I. U. S. Laws, statutes, etc. II. Title.

Library of Congress HJ4653.E8G7 18—5898

Copy 2.

TECHNICAL MICROFORM DATA

FILM SIZE: 35mm REDUCTION RATIO: 9:1 IMAGE PLACEMENT: IA (IIA) IB IIB

DATE FILMED: 2-12-97 INITIALS: MS

TRACKING # : 21264

FILMED BY PRESERVATION RESOURCES, BETHLEHEM, PA.

War Excess Profits Tax Law

Imposed by the

War Revenue Act, Approved October 3, 1917

Including Treasury Department Regulations No. 41

Guaranty Trust Company of New York

War Excess Profits Tax Law

Imposed by the

War Revenue Act, Approved October 3, 1917

Including Treasury Department Regulations No. 41

Guaranty Trust Company of New York

140 Broadway

FIFTH AVENUE OFFICE
Fifth Avenue and 43rd Street

MADISON AVENUE OFFICE
Madison Avenue & 60th Street

LONDON OFFICE
32 Lombard Street, E. C.

PARIS OFFICE
Rue des Italiens, 1 & 3

FOREWORD

WE have reprinted in this booklet the complete text of the War Excess Profits Tax Law, and the Regulations (No. 41) of the Treasury Department relating thereto.

These Regulations construe and interpret the War Excess Profits Tax Law, and are indispensable to individuals, partnerships, and corporations required to file Excess Profits Tax Returns. Reference to these regulations is essential in order that taxpayers may understand the operation and effect of the law.

We shall be glad to give information regarding the War Excess Profits Tax Law and the Federal Income Tax Law, and render such assistance as may be desired in the compilation of returns.

The Guaranty Trust Company of New York

February 4, 1918

Table of Contents

Regulations No. 41

Relative to the

War Excess Profits Tax

Imposed by Title II, Act of October 3, 1917

Definitions

ARTICLE 1. **Definitions.**—When used in these regulations the terms defined in articles 2 to 9 inclusive, shall, unless otherwise indicated by the context, be deemed to be used only with the scope or meaning ascribed to them respectively in such articles.

ART. 2. **Corporation.**—The term "corporation" includes joint-stock companies or associations, no matter how created or organized, insurance companies, and limited partnerships.

ART. 3. **Domestic and foreign.**—The term "domestic" means created under the law (statutory or other) of the United States or any State thereof, Alaska, Hawaii, or the District of Columbia, and the term "foreign" means created under the law (statutory or other) of any other

possession of the United States or of any foreign country or government.

ART. 4. **United States.**—The term "United States" (when used in a geographical sense) means only the States thereof, Alaska, Hawaii, and the District of Columbia.

ART. 5. **Taxable year.**—The term "taxable year" means the 12 months ending December 31 of each year, except in the case of a corporation or partnership which has fixed its own fiscal year, in which case it means such fiscal year. The first taxable year is the year ending December 31, 1917, except that in the case of a corporation or partnership which has fixed its own fiscal year, the first taxable year is the fiscal year ending during the calendar year 1917. (For special provisions as to prorating the amount of tax due for the portion of any fiscal year ending during the calendar year 1917, see articles 19 and 20.)

ART. 6. **Prewar period.**—The term "prewar period" means the calendar years 1911, 1912, and 1913, or if a corporation or partnership was not in existence or an individual was not engaged in the trade or business during the whole of such three years, then as many of such years during the whole of which the corporation or partnership was in existence or the individual was engaged in the trade or business.

ART. 7. **"Trade," "business," "trade or business" in case of corporations and partnerships.**—In the case of a corporation or partnership all income from whatever source derived is deemed to be received from its trade or business, and the terms "trade," "business," and "trade or business" include all sources of income.

ART. 8. **"Trade" in the case of individuals.**—In the case of an individual, the terms "trade," "business," and "trade or business" comprehend all his activities for gain, profit, or livelihood, entered into with sufficient frequency, or occupying such portion of his time or attention as to constitute a vocation, including occupations and professions. When such activities constitute a vocation they shall be construed to be a trade or business whether continuously carried on during the taxable year or not, and all the income arising therefrom shall be included in his return for excess-profits tax.

In the following cases the gain or income is not subject to excess-profits tax, and the capital from which such gain or income is derived shall not be included in "invested capital": (*a*) Gains or profits from transactions entered into for profit, but which are isolated, incidental, or so infrequent as not to constitute an occupation, and (*b*) the income from property arising merely from its ownership, including interest, rent, and

similar income from investments except in those cases in which the management of such investments really constitutes a trade or business.

ART. 9. **"Dividend."**—The term "dividend" has the same meaning as in section 31 of the act of September 8, 1916, as amended by the act of October 3, 1917. (See Income Tax Regulations, art. 106.)

Corporations, Partnerships, and Individuals Subject to the Tax

ART. 10. **Corporations.**—Every domestic corporation which has for the taxable year a net income of $3,000 or more is, unless exempt under article 13, required to make a return and to pay the tax, if any.

Every foreign corporation which has for the taxable year a net income of $3,000 or more from sources within the United States is, unless exempt under article 13, required to make a return and to pay the tax, if any.

ART. 11. **Partnerships.**—Every domestic partnership which has for the taxable year a net income of $6,000 or more is, unless exempt under article 13, required to make a return and to pay the tax, if any.

Every foreign partnership which has for the taxable year a net income of $3,000 or more from sources within the United States is, unless exempt

under article 13, required to make a return and to pay the tax, if any.

ART. 12. **Individuals.**—Every citizen or resident of the United States who has for the taxable year an aggregate net income in excess of $6,000 from trades, businesses, occupations or professions is, unless exempt under article 13, required to make a return and to pay the tax, if any.

Every nonresident alien individual who has for the taxable year an aggregate net income of $3,000 or more from trades, businesses, occupations, or professions carried on within the United States is, unless exempt under article 13, required to make a return and to pay the tax, if any.

ART 13. **Exemptions.**—The following are exempt from the tax:

(*a*) Corporations exempt under the provisions of section 11 of Title I of the act of September 8, 1916, from the tax imposed by such title. (See Income Tax Regulations, arts. 67, ff.)

(*b*) Partnerships carrying on or doing the same kind of business or coming within the same description.

(*c*) Individuals to the extent that they carry on or do the same kind of business or come within the same description.

Rates and Computation of Tax

ART. 14. **Classification of net income.**—For the purposes of the excess profits tax net income which is subject to the tax shall be divided into two classes, as follows:

A. Net income which is derived from a trade or business having no invested capital, or not more than a nominal capital, including in the case of an individual salaries, wages, fees, or other compensations; and

B. Net income which is derived from a trade or business having invested capital.

In the case of a corporation or partnership, all the trades and businesses in which it is engaged will be treated as a single trade or business (as provided in sec. 201), and its entire income will be held to be of the same class as the income from its principal trade or business.

In the case of an individual the net income subject to the excess profits tax shall be classified as provided in this article. Net income of class A shall be taxed as provided in article 15, and net income of class B shall be taxed as provided in article 16.

ART. 15. **Rate of tax on income of class A.**—The tax upon net income of class A as defined in article 14 shall be computed at the rate of 8 per cent upon the amount thereof in excess of $3,000

in the case of a domestic corporation; upon the amount thereof in excess of $6,000 in the case of a domestic partnership or of a citizen or resident of the United States; and upon the whole thereof in the case of a foreign corporation or partnership or of a nonresident alien individual.

ART. 16. **Rate of tax on income of class B.**—The tax upon net income of class B as defined in article 14 shall, except as otherwise provided in article 17, be computed at the following rates:

20 per cent of the amount of the net income in excess of the deduction (determined as provided in articles 21, 23, and 24) and not in excess of 15 per cent of the invested capital for the taxable year;

25 per cent of the amount of the net income in excess of 15 per cent and not in excess of 20 per cent of such capital;

35 per cent of the amount of the net income in excess of 20 per cent and not in excess of 25 per cent of such capital;

45 per cent of the amount of the net income in excess of 25 per cent and not in excess of 33 per cent of such capital;

60 per cent of the amount of the net income in excess of 33 per cent of such capital.

ILLUSTRATIONS.—(1) A corporation has a capital of $100,000, prewar earnings of 7 per cent, and a net income for the taxable year of $75,000.

The deduction allowed will be 7 per cent of the capital, or $7,000, plus $3,000 specific deduction, a total of $10,000.

The amount of the net income taxable at each rate will be as follows:

In excess of the deduction and not in excess of 15 per cent of the capital (rate, 20 per cent)	$5,000
In excess of 15 per cent of the capital and not in excess of 20 per cent thereof (rate, 25 per cent)	5,000
In excess of 20 per cent of the capital and not in excess of 25 per cent thereof (rate, 35 per cent)	5,000
In excess of 25 per cent of the capital and not in excess of 33 per cent thereof (rate, 45 per cent)	8,000
In excess of 33 per cent of the capital (rate, 60 per cent)	42,000

The tax would then be computed as follows:

20 per cent of $5,000	$1,000
25 per cent of $5,000	1,250
35 per cent of $5,000	1,750
45 per cent of $8,000	3,600
60 per cent of $42,000	25,200
Total tax	32,800

(2) An individual or partnership has a capital of $100,000, prewar earnings of 8 per cent, and a net income for the taxable year of $22,500.

The deduction allowed will be 8 per cent of the capital, or $8,000, plus $6,000 specific deduction, a total of $14,000.

The amount of the net income taxable at each rate will be as follows:

In excess of the deduction and not in excess of 15 per cent of the capital (rate, 20 per cent)	$1,000
In excess of 15 per cent of the capital and not in excess of 20 per cent thereof (rate, 25 per cent)	5,000
In excess of 20 per cent of the capital and not in excess of 25 per cent thereof (rate, 35 per cent)	2,500

The tax would then be computed as follows:

20 per cent of $1,000	$200
25 per cent of $5,000	1,250
35 per cent of $2,500	875
Total tax	2,325

ART. 17. **When deduction exceeds 15 per cent of invested capital.**—In any case in which the deduction determined as provided in articles 21, 23, and 24 is greater than 15 per cent of the invested capital and therefore can not be fully allowed under the first rate or bracket of article 16, then any remaining portion of the deduction will be allowed under the second bracket, and continued if necessary into the succeeding bracket or brackets until the entire amount of the deduction is allowed.

ILLUSTRATIONS.—(1) A corporation has a capital of $9,000; prewar earnings of 9 per cent; and a net income for the taxable year of $10,000.

The deduction allowed will be 9 per cent of the capital, or $810, plus $3,000 specific deduction, a total of $3,810.

The amount of the net income in each bracket will be as follows:

15 per cent of the capital	$1,350
In excess of 15 per cent of the capital and not in excess of 20 per cent thereof	450
In excess of 20 per cent of the capital and not in excess of 25 per cent thereof	450
In excess of 25 per cent of the capital and not in excess of 33 per cent thereof	720
In excess of 33 per cent of the capital	7,030

It is evident that the total deduction of $3,810 is greater than 15 per cent of the capital and so is not fully absorbed by the amount of net income not in excess of 15 per cent of the capital. In such case, applying article 17, the total deduction of $3,810 will be distributed as follows:

$1,350 in the first bracket, leaving nothing to be taxed at the 20 per cent rate.

$450 in the second bracket, leaving nothing to be taxed at the 25 per cent rate.

$450 in the third bracket, leaving nothing to be taxed at the 35 per cent rate.

$720 in the fourth bracket, leaving nothing to be taxed at the 45 per cent rate.

There still remains $840 of the deduction to be allowed in the fifth bracket against the $7,030 of income which would otherwise be taxable under that bracket. There would then be $6,190 of net income left to be taxed at the 60 per cent rate under the fifth bracket. Hence, the total excess-profits tax in this case would be $3,714.

(2) An individual or partnership has a capital of $40,000, prewar earnings of 9 per cent, and a net income for the taxable year of $12,000.

The deduction allowed will be 9 per cent of the capital, or $3,600, plus $6,000 specific deduction, a total of $9,600.

The amount of the net income in each bracket will be as follows:

15 per cent of the capital	$6,000
In excess of 15 per cent of the capital and not in excess of 20 per cent thereof	2,000
In excess of 20 per cent of the capital and not in excess of 25 per cent thereof	2,000
In excess of 25 per cent of the capital and not in excess of 33 per cent. thereof	2,000

It is evident that the total deduction of $9,600 is greater than 15 per cent of the capital and so is not fully absorbed by the amount of net income not in excess of 15 per cent of the capital. In such case, applying article 17, the total deduction of $9,600 will be distributed as follows:

$6,000 in the first bracket, leaving nothing to be taxed at the 20 per cent rate.

$2,000 in the second bracket, leaving nothing to be taxed at the 25 per cent rate.

$1,600, the balance of the deduction, to be allowed against the $2,000 of income in the third bracket.

There would then be $400 of income left in the third bracket to be taxed at the 35 per cent rate, and $2,000 in the fourth bracket to be taxed at the 45 per cent rate. Hence, the total excess-profits tax in this case would be $1,040.

ART. 18. **Constructive Capital for Application of Rates.**—Where the deduction allowed to a taxpayer is determined under article 24, the invested capital for the purpose of applying the rates of taxation under article 16 shall be deemed to be an amount which bears the same ratio to the net income of the trade or business for the taxable year which the average invested capital for the corresponding calendar year of representative corporations, partnerships, and individuals engaged in a like or similar trade or business bears to their average net income.

The Commissioner of Internal Revenue in determining for any calendar year the ratio which the average invested capital of representative

corporations, partnerships, and individuals engaged in any particular trade or business bears to their average net income, will include the invested capital and net income of representative corporations and partnerships for fiscal years ending during such calendar year.

For the purpose of applying this article in the case of a corporation or partnership which has fixed its own fiscal year, the ratio determined for the calendar year ending during such fiscal year shall be used.

ART. 19. **Computation of tax for fiscal year, part of which falls within calendar year 1916.**—**If a corporation or partnership** prior to March 1, 1918, makes a return for a fiscal year, part of which falls within the calendar year 1916, the tax for the first taxable year shall be that proportion of the tax computed upon the net income for such fiscal year which the number of months from January 1, 1917, to the end of such fiscal year bears to the entire number of months in such fiscal year.

ART. 20. **Computation of tax for period of less than 12 months.**—If a **corporation or partnership** at any time, either because it has just designated a fiscal year as provided in sections 8 or 13 of the act of September 8, 1916 (see Income Tax Regulations, arts. 31 and 211), or for any other reason, makes a return for a period of less than

12 months, the deduction will be an amount which bears the same ratio to the deduction allowable for a full year as the number of months in such period bears to 12 months.

Computation of the Deduction

ART. 21. **Trade or business having invested capital.**—The deduction used in computing the rates of tax under article 16 shall, except in cases coming within the conditions specified in articles 23 and 24, be as follows:

(*a*) In the case of a **domestic corporation** the sum of (1) an amount equal to the same percentage of the invested capital for the taxable year which the average amount of the annual net income of the trade or business during the prewar period was of the invested capital for the prewar period (except that 7 per cent shall be used if such percentage was less than 7 per cent, and 9 per cent shall be used if such percentage was more than 9 per cent, and 8 per cent shall be used if the corporation was not in existence during the whole of at least one calendar year during the prewar period), and (2) $3,000.

(*b*) In the case of a **domestic partnership** or of a **citizen or resident** of the United States, the sum of (1) an amount equal to the same per-

centage of the invested capital for the taxable year which the average amount of the annual net income of the trade or business during the prewar period was of the invested capital for the prewar period (except that 7 per cent shall be used if such percentage was less than 7 per cent, and 9 per cent shall be used if such percentage was more than 9 per cent, and 8 per cent shall be used if the partnership was not in existence or the individual was not engaged in the trade or business during the whole of at least one calendar year during the prewar period), and (2) $6,000.

(*c*) In the case of a **foreign corporation or partnership or of a nonresident alien individual,** an amount equal to the same percentage of the invested capital for the taxable year which the average amount of the annual net income of the trade or business during the prewar period was of the invested capital for the prewar period (except that 7 per cent shall be used if such percentage was less than 7 per cent, and 9 per cent shall be used if such percentage was more than 9 per cent; and 8 per cent shall be used if the corporation or partnership was not in existence or the individual was not engaged in the trade or business during the whole of at least one calendar year during the prewar period).

ART. 22. **Trade or business reorganized on or after January 2, 1913.**—If a trade or business carried on by a **corporation, partnership or individual** was formerly organized or reorganized on or after **January 2, 1913,** but is substantially a continuation of a trade or business carried on prior to that date, then the corporation or partnership shall be deemed to have been in existence, or the individual shall be deemed to have been engaged in the trade or business, prior to that date, and for the purpose of computing the deduction the net income and invested capital of the predecessor shall be deemed to have been the net income and invested capital of the present owner for the prewar period.

ART. 23. **When income for prewar period can not be satisfactorily determined, or when net income was low during prewar period, or when there was no net income during prewar period.**—In the following cases the deduction shall be determined as provided in this article:

(*a*) If the Secretary of the Treasury is unable satisfactorily to determine the average amount of annual net income of the trade or business for the prewar period;

(*b*) If the Secretary of the Treasury upon complaint finds that during the prewar period the percentage of the net income to the invested capital of the taxpayer was lower by one per

cent or more than the percentage of the net income to the invested capital of representative corporations, partnerships or individuals engaged in a like or similar trade or business during the same period.

(*c*) If, in the case only of a **domestic corporation or partnership** which was in existence during the prewar period, or of a **citizen or resident** of the United States who was engaged in the trade or business during the prewar period, the Secretary of the Treasury upon complaint finds that during the prewar period there was no net income from the trade or business.

In such cases the deduction shall be—

(1) An amount equal to the same percentage of the invested capital for the taxable year which the average deduction (determined in the same manner as provided in article 21, without including the $3,000 or $6,000 therein referred to) for such year of representative corporations, partnerships, or individuals engaged in a like or similar trade or business, is of their average invested capital for such year, plus

(2) In the case of a **domestic corporation,** $3,000, and in the case of a **domestic partnership** or a **citizen or resident** of the United States, $6,000.

In cases arising under subdivision (*a*) or (*c*) of this article the tax shall be assessed in the first

instance upon the basis of a deduction computed by the use of 7 per cent. In cases arising under subdivision (*b*) the tax shall be assessed in the first instance upon the basis of a deduction determined as provided in article 21.

In any case under this article a taxpayer claiming the benefit of this provision shall at the time of making the return file a claim for abatement (Form 47) of the amount by which the tax so assessed exceeds a tax computed upon the basis of the deduction determined as provided in this article. In cases coming within the provisions of this article payment of that portion of the tax covered by the claim for abatement will not be required until the claim is decided. If, however, in the judgment of the Commissioner of Internal Revenue the interests of the United States would be jeopardized thereby, the right is reserved to require the claimant to give a bond of such amount and with such sureties as the commissioner thinks wise to safeguard such interests. The bond shall be conditioned for the payment of any tax found to be due with interest thereon, and if a bond satisfactory to the commissioner is not given within such time as he prescribes, the full amount of the tax assessed will become immediately due and the amount overpaid, if any, will upon final decision of the application, be refunded as a tax erroneously or illegally collected.

ART. 24. **When invested capital can not be satisfactorily determined.**—If the Secretary of the Treasury is unable satisfactorily to determine the invested capital, the deduction shall be the sum of—

(1) An amount equal to the same proportion of the net income of the trade or business for the taxable year as the average deduction (determined in the same manner as provided in article 21 without including the $3,000 or $6,000 therein referred to) for the corresponding calendar year, of representative corporations, partnerships, and individuals engaged in a like or similar trade or business, is of their average net income, plus

(2) In the case of a **domestic corporation** $3,000, and in the case of a **domestic partnership** or a **citizen** or **resident** of the United States, $6,000.

The Commissioner of Internal Revenue in determining for any calendar year the proportion which the average deduction of representative corporations, partnerships, and individuals engaged in any particular trade or business is of their average net income, will include the deductions and net income of representative corporations and partnerships for fiscal years ending during such calendar year.

For the purpose of applying this article in the case of a corporation or partnership which has fixed its own fiscal year, the proportion determined for the calendar year ending during such fiscal year shall be used.

In every case of a trade or business having invested capital a return shall be made in the first instance in accordance with article 21 or 23, but the taxpayer may submit therewith a statement of reasons why in his opinion the tax should be assessed in accordance with this article.

Net Income—General Provisions

ART. 25. **Exemptions.**—The following classes of income are exempt from the tax:

(*a*) Income exempt from taxation under section 4 of the act of September 8, 1916, as amended. (See Income Tax Regulations, art. 5.)

(*b*) Income derived from the business of life, health, and accident insurance combined in one policy issued on a weekly premium payment plan.

(*c*) Compensation or fees received by officers and employees under the United States or any State, Territory, or the District of Columbia for their services as such.

ART. 26. **Net income of foreign corporations, partnerships, and nonresident alien individuals.**—In the case of a **foreign corporation or partnership** or a **nonresident alien individual** the net income shall be the net income from sources within the United States.

ART. 27. **Dividends received from a foreign corporation which is subject to Federal income tax.**—In the case of income derived by a **corporation or partnership** from dividends upon the stock of a foreign corporation, part of whose net income is subject to the income tax, there shall be deducted only that proportion of the dividends received upon such stock which the net income of such foreign corporation from sources within the United States is of its entire net income.

Where dividends upon the stock of a foreign corporation are received by an **individual,** as a part of his income from trade or business, there shall be included in the net income that proportion of the dividends received upon such stock which the net income of such corporation from sources outside the United States is of its entire net income.

Net Income—Corporations

ART. 28. **Taxable year.**—The net income of a **corporation** for the taxable year shall be determined by adding (1) the amount of net income ascertained and returned for income tax purposes for such taxable year as provided in Title I of the act of September 8, 1916, as amended, and (2) the amount, if any, received as interest on bonds or other obligations of the United States, issued

after September 24, 1917 (other than the interest received on an amount of such bonds or obligations the aggregate principal of which does not exceed $5,000), and deducting from the total so obtained the amounts received during the taxable year as dividends upon the stock or from the net earnings of other corporations, joint-stock companies or associations, or insurance companies, subject to the income tax imposed by Title I of such act of September 8, 1916, as amended, except as otherwise provided in article 27.

ART. 29. **Prewar period.**—The net income of a **corporation** for the prewar period shall be computed as follows:

(*a*) For the calendar year 1911 by adding (1) the amount of net income shown in item 9 of the return made under section 38 of the act of August 5, 1909, for the calendar year 1911, and (2) the amount of taxes paid to the United States *within* the calendar year 1911 under section 38 of such act;

(*b*) For the calendar year 1912 by adding (1) the amount of net income shown in item 9 of the return made under section 38 of the act of August 5, 1909, for the calendar year 1912, and (2) the amount of taxes paid to the United States *within* the calendar year 1912 under section 38 of such act; and

(*c*) For the calendar year 1913 by adding (1)

the amount of the entire net income shown in item 8 of the return made under Section II of the act of October 3, 1913, for the calendar year 1913, and (2) the amount of taxes paid *within* the calendar year 1913 under section 38 of the act of August 5, 1909, and Section II or IV of the act of October 3, 1913, and deducting from the total so obtained the amounts received during the calendar year 1913 as dividends upon the stock or from the net earnings of other corporations, joint-stock companies or associations, or insurance companies, subject to the income tax imposed by Section II of the act of October 3, 1913.

Net Income—Partnerships

ART. 30. **Taxable year.**—The net income of a **partnership** for the taxable year shall be determined by adding the amount of its entire net income (or in the case of a foreign partnership, its entire net income from sources within the United States) ascertained upon the same basis and in the same manner as provided with respect to individuals for income-tax purposes by Title I of the act of September 8, 1916, as amended (see Income Tax Regulations, art. 30), including the amounts, if any, received during the year as interest on bonds or other obligations of the United States issued after September 24, 1917 (other than

the interest on an amount of such bonds or obligations, the aggregate principal of which does not exceed $5,000), and deducting therefrom—

(1) The amounts received during the taxable year as dividends upon the stock or from the net earnings of corporations, joint-stock companies or associations, or insurance companies, subject to the income tax imposed by Title I of the act of September 8, 1916, as amended, except as otherwise provided in article 27; and

(2) The deductions, if any, for salaries or interest allowed by articles 32 and 33, if such deductions have not already been made.

ART. 31. **Prewar period.**—The net income of a **partnership** for each of the calendar years 1911, 1912, and 1913 shall be determined in the same manner as the net income for the taxable year, except that dividends upon the stock or from the net earnings of corporations, joint-stock companies or associations, or insurance companies, subject to the tax imposed by section 38 of the act of August 5, 1909, or by Section II of the act of October 3, 1913, shall be deducted. (See art. 30.)

ART. 32. **Deductions allowed for salaries paid to partners.**—In computing net income for purposes of the excess profits tax a **partnership** will be allowed to deduct as an expense reasonable salaries or compensation paid to individual part

ners for personal services actually rendered during the taxable year, if the payments are made in accordance with prior agreements and are properly recorded on the books of the partnership. In no case shall the salaries or compensation so deducted be in excess of the salaries or compensation customarily paid for similar services under like responsibilities by corporations engaged in like or similar trades or businesses.

With respect to any period prior to March 1, 1918, regardless of whether a previous agreement has been made as to salaries or compensation, a similar deduction will be allowed for services actually rendered.

In the case of a foreign partnership the deduction shall be limited to those portions of salaries or compensation which are paid for services rendered with respect to trade or business carried on in the United States.

A partner in his individual capacity is, however, subject to the excess profits tax, if any, at the 8 per cent rate under article 15 with respect to any salary or compensation from the partnership for personal services (including any amounts allowed to the partnership as a deduction on his account for the period prior to March 1, 1918).

ART. 33. **Deductions allowed for interest on bona fide loans by partners.**—In computing net income for purposes of the excess profits tax a

partnership will be allowed to deduct amounts paid during the year to an individual partner as interest upon any bona fide loan, but no deduction for so-called interest upon capital will be allowed.

ART. 34. **If deduction is made under article 32 or 33, corresponding deduction must also be made for prewar period.**—If, in computing net income for purposes of the excess profits tax, a **partnership** makes a deduction as allowed by article 32 for salaries paid to partners during the taxable year, it must also in computing net income for the prewar period make a corresponding deduction; and if it makes such a deduction as allowed by article 33 for interest paid to partners, it must also in computing net income for the prewar period make a corresponding deduction for any such interest actually paid during that period.

Net Income—Individuals

ART. 35. **Determination of net income where there is no invested capital or only nominal capital.**—The net income which is derived from a trade or business having no invested capital or not more than a nominal capital, including salaries, wages, fees or other compensations (constituting net income of class A as defined in

art. 14) shall be determined for the taxable year by adding the total net income from all such sources (or in the case of a **nonresident alien individual** the total net income from all such sources within the United States) as reported for income tax purposes for the same year.

ART. 36. **Determination of net income for taxable year when there is invested capital.**—The net income which is derived from a trade or business having invested capital (constituting net income of class B, as defined in art. 14) shall be determined for the taxable year by adding the total net income from such sources (or in the case of a **nonresident alien individual** the total net income from such sources within the United States) as reported for income tax purposes for the same year and deducting therefrom the deduction, if any, for salary allowed by article 39, if such deduction has not already been made.

There shall be excluded the amounts received during the year upon the stock or from the net earnings of corporations, joint-stock companies or associations, or insurance companies, subject to the income tax imposed by Title I of the act of September 8, 1916, as amended.

In the case, however, of an individual dealing in securities or otherwise using securities in trade or business there shall be included (1) the amount, if any, received as interest on bonds or obligations

of the United States, issued after September 24, 1917 (other than the interest received on an amount of such bonds or obligations the aggregate principal of which does not exceed $5,000), and (2) such proportion of dividends received upon the stock of foreign corporations as is required to be included by article 27.

ILLUSTRATION.—An individual owns a farm representing an invested capital of $25,000, a country store with an invested capital of $6,000, and a flour mill with an invested capital of $10,000. His net income from the farm is $4,000, from the store $3,000, and from the mill $3,000. Thus his total net income of class B is $10,000. His total invested capital is $41,000. Assuming that his deduction is at the rate of 8 per cent, his total deduction will be $3,280 plus $6,000, or $9,280, to be applied against his net income of $10,000 in computing the tax at the graduated rates under articles 16 and 17.

The same individual allows himself a salary of $1,000 for working the farm and $900 for running the store, draws a salary of $1,200 as president of the local bank, and receives $250 in compensation for personal services of various kinds, such as road work, helping neighbors in harvest, etc. He also receives $300 in dividends on an investment in certain stocks and $100 as supervisor's fees. The last item—that is, supervisor's fees—is exempt under the law (sec. 201, subdivision a). The $300 in dividends is not taxable, inasmuch as it is derived from a mere investment not connected with his trade or business. His net income of class A will therefore consist of his salaries and his compensation for personal services, a total of $3,350. Since he is entitled to a deduction of $6,000 as to this class of income, he will have no tax to pay at the 8 per cent rate under article 15.

ART. 37. **Deduction of contributions for religious, charitable, etc., purposes.**—Contributions or gifts for religious, charitable, etc., purposes allowed as a deduction for purposes of the income tax under paragraph "Ninth" of subdivision (a) of section 5 of the act of September 8, 1916, as amended, may, subject to the limitations therein contained, be deducted in computing the net income of the trade or business for purposes of the excess profits tax only when it is shown to the satisfaction of the Commissioner of Internal Revenue that such contributions or gifts are made by the trade or business and not by the individual in his personal capacity.

ART. 38. **Determination of net income for the prewar period where there is invested capital.**—The net income which is derived from a trade or business having invested capital (constituting net income of class B as defined in article 14) shall be determined for each of the calendar years 1911, 1912, and 1913 upon the same basis and in the same manner as provided in article 36.

ART. 39. **Deduction allowed for salary to himself.**—An individual carrying on a trade or business having an invested capital may in computing the net income of the trade or business for purposes of the excess profits tax deduct a reasonable amount designated by him as salary or compensation for personal service actually rendered

by him in the conduct of such trade or business. In no case shall the amount so designated be in excess of the salaries or compensation customarily paid for similar service under like responsibilities by corporations or partnerships engaged in like or similar trades or businesses.

In the case of a **nonresident alien individual,** the amount deducted shall be limited to that portion of the salary or compensation which is for service rendered with respect to trade or business carried on in the United States.

The amount so designated shall, however, be included in computing his net income of class A under article 35; and the balance of the income from his trade or business shall be included in computing his net income of class B under article 36.

ILLUSTRATION.—An individual owns and runs a newspaper having an invested capital of $50,000. The net income from the newspaper, without making any allowance for the salary of the owner, is $20,000, and, as income of class B, is subject to the graduated rates prescribed in article 16. His deduction, as provided for in subdivision (*b*) of article 21, would be $4,500 (9 per cent of his capital) plus $6,000, a total of $10,500. If, however, he allows himself a salary of $3,000, the net income from the newspaper will be $17,000, and the deduction of $10,500 will be applied against that amount.

His salary of $3,000 must be included in his return as income of class A, which is subject to the 8 per cent rate under article 15. If it constitutes his only income of that class he will pay no tax thereon, inasmuch as it is less

than the deduction of $6,000 to which he is entitled as to that class of income. But if, for example, he receives in addition a salary of $4,000 as president of the local bank, his total net income of class A will be $7,000, and he will be required to pay a tax of 8 per cent on $1,000 thereof, or $80.

ART. 40. **If deduction is made under article 39 corresponding deduction must also be made for prewar period.**—If, in computing net income for purposes of the excess profits tax, an individual deducts a reasonable amount designated as salary or compensation for personal services rendered by himself, as allowed by article 39, he must also in computing net income for the prewar period, make a corresponding deduction.

ART. 41. **Individual member of partnership.**—Inasmuch as a partner in his individual capacity is not considered to be engaged in trade or business with respect to his share in the profits of the partnership, he is not subject to excess profits tax thereon. Consequently, in computing his net income for purposes of the excess profits tax he need not include his share of the partnership profits.

He shall, however, in computing his net income of class A under article 35, include any salary or compensation from the partnership for personal services (including any amount allowed to the partnership as a deduction on his account for the period prior to March 1, 1918, in accordance with article 32).

Invested Capital—General Provisions

ART. 42. **Allowance for depletion, depreciation, and obsolescence in computation of invested capital.**—The term "invested capital" as used in the excess profits tax law means the invested capital of the present owner. The basis, or starting point, in the computation of invested capital is found in the amount of cash and other property paid in, the original values of such other property being determined in accordance with the rules laid down in these regulations. But the computation does not stop with such original entries or amounts; it must take properly into account the surplus and undivided profits. In the computation of surplus and undivided profits, however, full recognition must first be given to expenses incurred and losses sustained from the original organization of the business concern down to the taxable year, including among such expenses and losses a reasonable allowance for depletion, depreciation, or obsolescence of property originally acquired for cash or for stock or shares or in any other manner. If value appreciation of a kind not subject to income tax (other than that allowed under article 55) has been taken up in the accounts, a deduction must be made in respect of such appreciation so taken up. In the computation

of the invested capital for any year full effect must also be given to any liquidation of the original capital.

ART. 43. **How to ascertain average invested capital for the year, averaged monthly.**—The invested capital for any prewar or taxable year (or where the tax is computed upon the basis of a period less than a year, for such period) is the average invested capital for the year or period averaged monthly, according to the following rules:

(*a*) Add the capital for each of the several months during which no change occurs, and the average capital (ascertained as provided in subdivision (*b*) of this article) for each month in which a change occurs and divide the total by the number of months in the year or period.

(*b*) To ascertain the capital for any month in which a change occurs multiply the capital as of the first day of the month by the number of days it remains constant and the capital after each change by the number of days (including the day on which the change occurs) during which it remains constant, add the products, and divide the sum by the number of days in the month.

ART. 44. **Items not allowed to be included in invested capital.**—The second paragraph of section 207 of the excess profits law specifies certain

items which may not be included in invested capital, namely:

(a) Stocks, bonds (other than obligations of the United States), or other assets, the income from which is not subject to the excess profits tax; and

(b) Money or other property borrowed.

The term "money or other property borrowed" as used in section 207 and these regulations includes not only cash or other borrowed property which can be identified as such, but current liabilities and temporary indebtedness of all kinds, and any permanent indebtedness upon which the taxpayer is entitled to an interest deduction in computing net income. A corporation which under the income-tax law is allowed to deduct only a part of the entire interest paid upon its indebtedness, may include in its invested capital such a proportion of its permanent indebtedness as the amount of interest upon such indebtedness which the corporation is not allowed to deduct is of the total amount of interest paid upon such indebtedness during the taxable year.

ART. 45. **When income from tax-free securities consists partly of trading profits and partly of interest, dividends, etc.**—Whenever income consists partly of gains or profits subject to the excess profits tax arising from trading in stocks, bonds, etc., the dividends or interest on which are not subject to such tax, and partly of such dividends

or interest, then, subject to the limitations as to borrowed money, there shall be included in the invested capital an amount which bears the same ratio to the total amount invested in such stocks or bonds as the amount of such gains or profits bears to the total amount of such income.

ART. 46. **Treatment of stock of foreign corporations when held by domestic corporations or partnerships or by citizens or residents of the United States.**—In the case of **domestic corporations or partnerships** and of **citizens** or **residents** of the United States holding stock in a foreign corporation part of whose net income is subject to the income tax, there shall be included in invested capital such proportion of the value of the stock in such foreign corporation as the net income of such foreign corporation from sources outside the United States is of its entire net income.

ART. 47. **Construction of terms "tangible property" and "intangible property."**—The term "other intangible property" as used in section 207 will be construed to mean property of a character similar to good will, trade-marks, and the other specific kinds of property enumerated in the same clause. With respect to property not clearly of such a character, rulings will be issued as occasion may demand to indicate whether it shall be regarded as tangible or intangible.

The following classes of property, when paid in for stock or shares in a corporation or partnership, will be regarded as tangible property so paid in:

(a) Stocks.
(b) Bonds.
(c) Bills and accounts receivable.
(d) Notes and other evidences of indebtedness.
(e) Leaseholds.

But when a corporation pays for intangible property by the issuance of its own stock or bonds, this will not be regarded as being a payment bona fide made in cash or tangible property within the meaning of section 207.

ART. 48. **Invested capital of foreign corporations or partnerships or nonresident alien individuals.**—When used with reference to a **foreign corporation or partnership** or a **nonresident alien individual,** the term "invested capital" means that proportion of the entire invested capital as defined and limited by these regulations which the net income from sources within the United States is of the entire net income.

ART. 49. **Reorganization on or after January 2, 1913.**—A trade or business carried on by a **corporation, partnership, or individual,** which has been formerly organized or reorganized on or after January 2, 1913, but which is substantially a continuation of a trade or business carried on

prior to that date, shall, for the purposes of the excess profits tax, be deemed to have been in existence prior to that date and the invested capital of its predecessor prior to that date shall be deemed to have been its invested capital. This article relates to the prewar period and does not apply to the invested capital for the taxable year.

ART. 50. **Reorganization after March 3, 1917.**—In case of the reorganization, consolidation, or change of ownership of a trade or business after March 3, 1917, if an interest or control in such trade or business of 50 per cent or more remains in control of the same persons, corporations, associations, partnerships, or any of them, then in ascertaining the invested capital of the trade or business no asset transferred or received from the prior trade or business shall be allowed a greater value than would have been allowed under these regulations in computing the invested capital of such prior trade or business if such asset had not been so transferred or received, unless such asset was paid for specifically as such, in cash or tangible property, and then not to exceed the actual cash or actual cash value of the tangible property paid therefor at the time of such payment.

ART. 51. **Invested capital for prewar period.**—The invested capital for the prewar period shall,

in general, be determined in the same manner as for the taxable year, except that the valuation as of January 1, 1914, shall not apply to tangible property paid in for stock or shares.

ART. 52. **Scope of section 210.**—Section 210 provides for exceptional cases in which the invested capital can not be satisfactorily determined. In such cases the taxpayer may submit to the Commissioner of Internal Revenue evidence in support of a claim for assessment under the provisions of section 210. (See articles 18 and 24.) Such exceptional cases may consist, among others, of the following:

(1) Where, through defective accounting or the lack of adequate data, it is impossible accurately to compute invested capital.

(2) Where upon application by a foreign taxpayer the Secretary of the Treasury finds that the expense of securing the data necessary for the computation of the invested capital would be unreasonable in view of the amount of tax involved, or that it is impracticable to determine either the "entire invested capital" or the "entire net income."

(3) Long-established business concerns which by reason of ultra-conservative accounting or the form and manner of their organization would, through the operation of section 207, be placed at a serious disadvantage in competing with representative concerns in a like or similar trade or business.

(4) Where the invested capital is seriously disproportionate to the taxable income. Such cases may arise through:

(*a*) The realization in one year of the earnings of capital unproductively invested through a period of years or of the fruits of activities antedating the taxable year; or,

(*b*) Inability to recognize or properly allow for amortization, obsolescence, or exceptional depreciation due to the present war, or to the necessity in connection with the present war of providing plant which will not be wanted for the purposes of the trade or business after the termination of the war.

Invested Capital—Corporations and Partnerships

ART. 53. **Rule for computing invested capital.**—In computing invested capital, every corporation or partnership paying taxes at the graduated rates prescribed in section 201 (see art. 16), shall add together its **paid in capital** and its **paid in or earned surplus and undivided profits** (under whatever name the same may be called) as shown by its books at the beginning of the taxable year. The total thus obtained shall be adjusted for any asset or item which it covers that is not carried on the books at the valuation prescribed by law or by these regulations. When necessary,

adjustment (addition or subtraction) shall be made in respect of the following:

Adjustments

1. Stock or shares issued in the purchase of intangible property prior to March 3, 1917, which can not be included in an amount exceeding (*a*) 20 per cent of the par value of the total stock or shares outstanding on that date, (*b*) the actual value of such intangible property at the date acquired, or (*c*) the par value of the stock or shares issued in payment therefor, whichever is the lowest. (See arts. 57 and 58.)

2. Stock or shares issued for a mixed aggregate of tangible property, patents and copyrights, and good will or other intangible property. (See art. 59.)

3. Stock or shares issued for patents and copyrights, valued at (*a*) their actual cash value at the time of payment, or (*b*) the par value of the stock or shares issued therefor, whichever is lower. (See art. 56.)

4. Stock or shares issued for tangible property prior to January 1, 1914, valued at (*a*) the actual cash value of such property on January 1, 1914, or (*b*) the par value of the stock, whichever is lower. (See art. 55.)

5. Stock originally issued for property and subsequently returned to the corporation as a gift, etc. (See art. 54.)

6. Add any proportion of its permanent indebtedness which may be included under article 44.

7. Add value of tangible property paid in for stock or shares in excess of the par value of such shares, when authorized by article 63.

8. Add amounts expended in the past for (*a*) the acquisition of tangible property or (*b*) specifically for good will and other similar intangible property, when authorized by article 64.

9. For the valuation of assets acquired in reorganizations, etc., (*a*) effected after March 3, 1917, see article 50; (*b*) as to the prewar period, see articles 49 and 51.

10. Deduct amounts representing appreciation excluded by article 42.

11. Make any additional deductions required by reason of insufficient allowances in the accounts of the taxpayer for depletion, depreciation, and obsolescence. (See art. 42.)

Whenever any corrections are made in respect of the capital stock and surplus, corresponding corrections must be made in the respective asset items in the balance sheet of the taxpayer.

After making any adjustments required under paragraphs 1 to 11 above, the adjusted total of

the capital and surplus account will represent the invested capital at the beginning of the taxable year, except that in any case where the admissible assets (and these include all assets when valued in accordance with these regulations, except stocks, bonds—other than obligations of the United States—the income of which is not subject to excess-profits tax) are less than the amount of such adjusted total, then the invested capital must be further reduced to an amount equal to the sum of the admissible assets. Tax-free securities and stock in foreign corporations may be included as admissible assets *to the extent* authorized in articles 45 and 46.

If there has been any change made during the taxable year in the amount of the invested capital, the monthly average shall be taken (see art. 43), but in no case may the invested capital include any surplus or undivided profits earned during the taxable year.

With respect to the taxable year 1917, every such corporation and partnership will be required to submit a balance sheet as at the first day of the taxable year and also a balance sheet as at the close of the taxable year. Thereafter every such corporation and partnership will be required to submit a balance sheet as at the close of each taxable year. Balance sheets should be made in accordance with the books of the taxpayer

and changes in respect of any items therein made pursuant to these regulations should be explained in a separate statement attached to the balance sheet to which it relates.

ART. 54. **Stock returned to corporation.**—For the purpose of computing invested capital, in cases where the stock of a corporation is issued or exchanged for property (tangible or intangible), the following rule will apply:

When any of such stock is returned to the corporation as a gift or for a consideration substantially less than its par value, the stock so returned shall not be treated as a part of the stock issued or exchanged for such property. The proceeds derived in cash or its equivalent from the resale of the stock so returned shall, however, be included in the invested capital if retained and employed in the business.

ART. 55. **Valuation of tangible property paid in for stock or shares.**—Tangible property paid in for stock or shares prior to January 1, 1914, must be valued at either (*a*) the actual cash value of such property on January 1, 1914, or (*b*) the par value of the stock or shares specifically issued therefor, whichever is lower. This is one of the few cases in which the law permits allowance to be made for appreciation, and here no appreciation can be recognized unless the original stock or shares were ***specifically*** issued in exchange for such tangible property.

Tangible property paid in for stock or shares on or after January 1, 1914, will be taken at the actual cash value of such property at the time of payment, irrespective of the par value of the stock or shares.

ART. 56. **Patents and copyrights.**—Patents and copyrights paid in for stock or shares must be valued at either (*a*) the actual cash value at the time of payment or (*b*) the par value of the stock or shares issued therefor, whichever is lower.

ART. 57. **Valuation of intangible property.**—If good will, trade-marks, trade brands, franchises of a corporation or partnership, or other intangible property has been purchased with stock or shares issued prior to March 3, 1917, the amount that may be included in invested capital must not exceed (*a*) 20 per cent of the par value of the total stock or shares outstanding on that date, nor (*b*) the actual value of the asset at the date acquired, nor (*c*) the par value of the stock issued in payment for the asset.

ART. 58. **Application of 20 per cent limitation upon intangible property.**—The 20 per cent limitation upon intangible property purchased prior to March 3, 1917, for or with stock or shares of the corporation or partnership, applies not to each item or class of intangible property separately, but to the aggregate amount of all such property

so purchased. Such intangible property may be included in the invested capital only up to an amount not exceeding 20 per cent of the total stock or shares of the corporation or partnership on March 3, 1917, even though the aggregate amount of such intangible property be greater in value than such 20 per cent of the par value of the total stock or shares.

Intangible property bona fide purchased prior to March 3, 1917, with stock having no par value may be included in invested capital at a value not exceeding the actual cash value of such intangible property at the time of the purchase and in an amount not exceeding 20 per cent of the total shares of stock outstanding on March 3, 1917, measured by their value as at the date or dates of issue.

ART. 59. **Rules to govern cases where shares or securities are issued for mixed aggregate of tangible and intangible property.**—Where stock or shares (or stocks or shares and bonds or other obligations) have, prior to March 3, 1917, been issued for a mixed aggregate of—

(*a*) Tangible property,

(*b*) Patents and copyrights, and

(*c*) Good will or other intangible property,

the following rules will govern:

(1) In the absence of satisfactory evidence to the contrary, it will be presumed in the case of a

corporation, that its stock was issued for the following purposes in the order named:

(*a*) Good will or other intangible property,

(*b*) Patents and copyrights, and

(*c*) Tangible property.

(2) Upon the production by the taxpayer of evidence satisfactory to the Commissioner of Internal Revenue as to the actual values at the date of acquisition of (*a*) the tangible property and (*b*) the patents and copyrights, the sum of these two items may be applied against the total par value of the securities issued and the remainder will then be deemed to represent the par value of the securities issued for the good will or other intangible property.

(3) Cases where mixed aggregates of tangible and intangible property have been paid in for stock and bonds shall, if the Secretary of the Treasury is unable to determine satisfactorily the respective values of the several classes of property at the time of payment, be treated as coming under articles 18 and 24 and the tax shall be assessed accordingly.

ART. 60. **Valuation of intangible assets purchased.**—Good will and other similar intangible assets purchased with cash or tangible property must be taken at a value not in excess of the cash or actual cash value of the tangible property specifically paid therefor.

ART. 61. **Surplus or undivided profits earned during any year excluded in computing invested capital for such year.**—Profits earned during any taxable year or prewar year shall not be included in the computation of the invested capital for such year, even though set up as "surplus" upon the books or distributed in the form of stock dividends.

ART. 62. **Scope of phrase "surplus and undivided profits."**—Clause (3) of subdivision (*a*) of section 207 authorizes the inclusion in invested capital of earned surplus and undivided profits used or employed in the business. Inasmuch as section 201 provides that all the income of a corporation or partnership shall be deemed to be received from its trade or business, all the surplus and undivided profits of a corporation or partnership (exclusive of undivided profits earned during the year), from whatever source derived, will, unless invested in stocks, bonds (other than obligations of the United States), or other assets, the income from which is not subject to the excess profits tax, be deemed to be used or employed in the business and may be included in the invested capital.

ART. 63. **When tangible property may be included in surplus.**—Where it can be shown by evidence satisfactory to the Commissioner of Internal Revenue that tangible property has

been conveyed to a corporation or partnership by gift or at a value, accurately ascertainable or definitely known as at the date of conveyance, clearly and substantially in excess of the cash or the par value of the stock or shares paid therefor, then the amount of the excess shall be deemed to be paid in surplus. The adopted value shall not cover mineral deposits or other properties discovered or developed after the date of conveyance, but shall be confined to the value accurately ascertainable or definitely known at that time.

Evidence tending to support a claim for a paid-in surplus under these circumstances must be as of the date of conveyance, and may consist, among other things, of (1) an appraisal of the property by disinterested authorities, (2) the assessed value in the case of real estate, and (3) the market price in excess of the par value of the stock or shares.

ART. 64. **Reconstruction of surplus and undivided profits accounts.**—Where through failure to provide for depletion, depreciation, obsolescence, or other expenses or losses, or where for any other cause or reason the books of account of the taxpayer do not show the true paid-in or earned surplus and undivided profits, in the computation of invested capital such adjustments

shall be made as are necessary to arrive at a statement of the correct amount.

Where a taxpayer claims additions to the capital account, the books of account will be presumed to show the true facts and the burden of proof will rest upon the taxpayer. Such additions will be accepted only to the extent and under the conditions stated below:

(1) Amounts which have been expended in the past for the acquisition of plant, equipment, tools, patterns, furniture, fixtures, or like tangible property, having a useful life extending substantially beyond the year in which the expenditure was made, and which have been charged as current expense, may (less proper reduction for depreciation or obsolescence) be added to the surplus account in computing invested capital when such assets are still owned and in active use by the taxpayer during the taxable year. Special tools, patterns, and similar assets shall not be assigned any value if their cost has been recovered through having been included in the price of goods. If their cost has not been so recovered and they are held for only occasional use, they shall not be assigned a value in excess of the fair value based upon the earnings actually arising from their current use. Assets of this kind not in current use shall not be valued at more than their nominal or scrap value.

(2) Amounts expended in the past for good will, trade-marks, trade brands, franchises, and other intangible assets of a like character, are controlled by the language of the statute which provides that such assets "shall be included in invested capital if the corporation or partnership made payment bona fide therefor specifically as such in cash, or tangible property." The Commissioner of Internal Revenue will recognize additions to invested capital on account of intangible assets only if such assets have been explicitly paid for in the manner prescribed by the statute. Where expenditures have been made for the general development of intangible assets, and charged as current expense, no readjustment thereof will be allowed.

(3) Amounts under (1) and (2) above, expended on or after March 1, 1913, will, in the case of a corporation, be limited strictly to items which have not been deducted in computing taxable income upon its income tax return. Whenever a corporation has claimed and the department has allowed a deduction in respect to its income tax, the item upon which the deduction is based shall not be restored to the surplus account nor included in the invested capital.

(4) The taxpayer shall in his return to the Commissioner of Internal Revenue make a state-

ment of the proposed additions, specifying the kinds and amounts of property involved, the years in which the expenditures were made, and the method followed in distinguishing between capital outlays and current expenses.

(5) The taxpayer shall also show that adequate provision has been made for the depletion, depreciation, or obsolescence of such of the assets so acquired as are, under the rulings of the department, subject to recognized depreciation.

ART. 65. **Invested capital of insurance companies.**—(*a*) The invested capital of a **mutual insurance company** will be deemed to consist of the sum of (1) any surplus or contingent reserves maintained for the general use of the business, plus (2) any legal reserves the net additions to which are included in the net income subject to the tax—subject to the restrictive provisions of article 44 requiring the exclusion of tax-free assets other than obligations of the United States.

(*b*) The invested capital of a **stock insurance company** will be deemed to consist of its capital stock, paid in or earned surplus and undivided profits (subject to the same restrictive provision of art. 44), computed in accordance with the provisions of article 53.

Invested Capital—Individuals

ART. 66. **Items included in invested capital.**—Subject to the limitations stated in these regulations the invested capital of an **individual** is measured by the total of three items:

(1) Actual cash paid into the trade or business.

(2) Tangible property paid into the trade or business,

(3) Patents and copyrights, and good will, trade-marks, trade-brands, franchises, and other intangible property. (See art. 68.)

ART. 67. **Valuation of tangible property.**—Subject to the requirements of article 42 as to allowance for depletion, depreciation, and obsolescence, valuation of tangible property will be as follows:

In the case of tangible property purchased with cash, the valuation will be based upon the cost (estimated if not known) in cash at the time purchased.

In the case of tangible property paid in as such prior to January 1, 1914, the valuation will be based upon its actual cash value as of that date. Adequate evidence of such value must be furnished by the taxpayer.

In the case of tangible property paid in on or after January 1, 1914, the valuation will be based upon its actual cash value at the time of payment.

It will be presumed that the tangible assets employed in the trade or business have been acquired with cash which has been either paid in directly or derived from earnings of the trade or business; but the taxpayer will be entitled to show that such assets were paid in as tangible property.

ART. 68. **Valuation of intangible property.**—Patents and copyrights, and good will, trade-marks, trade-brands, franchises, and other similar intangible assets may be included in invested capital at a value not to exceed the actual cash paid therefor or the actual cash value at the time of payment of the tangible property paid therefor, but only if bona fide payment was made therefor specifically as such in cash or tangible property.

ART. 69. **Profits earned during taxable year may be included.**—The restriction in respect of undivided profits earned during the taxable year which is imposed upon corporations and partnerships does not apply to individuals, and therefore, unless otherwise shown, the profits of the taxable year remaining in the trade or business will be deemed to have arisen ratably throughout the year, and the capital at the beginning of the year may be increased by the total amount of such profits remaining in the trade or business averaged monthly over the year.

ART. 70. **Rule for computing invested capital.**—Where an individual keeps books of account his invested capital will be found in his capital account (under whatever name it may be called) after making therein any adjustments or corrections required by these regulations, provided that the assets other than those not allowed to be included equal or exceed the amount of such capital account. Otherwise the invested capital shall be the amount of such assets.

Where an individual does not keep books of account he should prepare and preserve a statement as at the beginning of the taxable year and as at the end of the taxable year, showing in full all his assets valued in accordance with these regulations, and all his liabilities. The excess of such assets over such liabilities at the beginning of the year and again at the end of the year will constitute the invested capital of the individual on those dates, respectively, provided, that in each case the assets other than those not allowed to be included equal or exceed the amount of such excess. Otherwise the invested capital shall be the amount of such assets. The amount of the difference between the capital thus shown as at the beginning of the year and at the end of the year will, in the absence of evidence to the contrary, be deemed to have arisen ratably throughout the year, and the capital at the

beginning of the year will be increased or decreased, as the case may be, by such amount averaged monthly over the year.

If an individual is engaged in more than one trade or business having invested capital, then his invested capital for the purposes of computing the deduction and applying the rates of taxation will be determined by taking the total invested capital of all such trades or businesses.

The terms "assets" and "liabilities" as used in this article relate only to the assets or liabilities of the trade or business.

Nominal Capital

ART. 71. **Application of section 209.**—Section 209 (see art. 15) applies primarily to occupations, professions, trades, and businesses engaged principally in rendering personal service in which the employment of capital is not necessary and the earnings of which are to be ascribed primarily to the activities of the owners.

In determining whether a trade or business is taxable under article 15 no weight will be given to the fact that it is carried on by means of personal service unless the principal owners are regularly engaged in the active conduct of the trade or business.

ART. 72. **Application of section 209 not to be affected by mere size of capital, form of organization, etc.**—Business concerns which render professional or personal service and are of the class normally taxable under article 15 shall not be taken out of that class merely because of the size of the capital if the employment of such capital is necessitated by delay and irregularity in the receipt of fees, etc., or if such capital is wholly or mainly used as a fund from which to advance salaries, wages, etc., or to provide office furniture, accommodations, and equipment, nor because of the form of organization, whether corporation or partnership, nor in the case of a partnership because of the number of partners.

ART. 73. **Agents and brokers.**—Agents and brokers requiring and using no capital or merely a nominal capital in their business are taxable under article 15, but commission houses regularly employing a substantial amount of capital, whether to lend to principals or to carry goods on their own account, are not deemed to be agents or brokers and are taxable under the provisions of article 16.

ART. 74. **Meaning of "nominal capital"; businesses which will not be deemed to have nominal capital.**—The term "nominal capital" as used in section 209 means in general a small or negligible capital whose use in a particular trade or

business is incidental. The following will not be construed as businesses having a nominal capital for purposes of excess profits tax:

(*a*) A business which because of conditions arising from the war or exceptional opportunities for profits earns a disproportionately high rate of profit during the taxable year, if it belongs to a class which necessarily and customarily requires capital for its operation. In the determination of doubtful cases stress will be laid upon the normal relation of net income to capital during prewar years;

(*b*) Corporations which, although their capitalization is nominal, employ a substantial amount of capital in their business;

(*c*) A business having a substantial capital, but whose invested capital within the meaning of section 207 is reduced to a nominal amount by the operation of the restrictive clauses of that section, e. g., where the capital, consisting originally of a small amount of cash paid in, has since appreciated in value, or where the capital is largely covered by indebtedness or consists principally of tax-free securities or of intangible assets built up or developed by expenditures which have been regularly deducted as items of current expense.

Returns

ART. 75. **When a return of information as to the invested capital and net income for the prewar period will not be required.**—For the purposes of the excess profits tax, a return of information with respect to the invested capital and net income for the prewar period will not be required of a corporation, partnership, or individual in the following cases:

(1) If the taxpayer accepts the minimum percentage, viz., 7 per cent, as the percentage to be used in computing the deduction under article 21; or

(2) If the trade or business is taxable only at the 8 per cent rate under article 15.

This article must not be construed as not requiring a return of information as to all facts which may be necessary for the ascertainment of the capital and income for the taxable year whenever such a return is required by the Commissioner of Internal Revenue.

ART. 76.—**A married woman may make separate return.**—A married woman who is a sole trader or is entitled to any taxable income to her sole and separate use may, for purposes of the excess-profits tax, make a separate return in the same manner as any other individual.

ART. 77. **When affiliated corporations must furnish information as to intercorporate relations.**—For the purpose of the excess profits tax every corporation will describe in its return all its intercorporate relationships with other corporations with which it is affiliated, and will furnish such information in relation thereto as will enable the Commissioner of Internal Revenue to compute the amount of the tax properly due from each corporation on the basis of an equitable and lawful accounting.

For the purpose of this regulation two or more corporations will be deemed to be affiliated (1) when one such corporation owns directly or controls through closely affiliated interests or by a nominee or nominees, all or substantially all of the stock of the other or others, or when substantially all of the stock of two or more corporations is owned by the same individual or partnership, and both or all of such corporations are engaged in the same or a closely related business; or (2) when one such corporation (a) buys from or sells to another products or services at prices above or below the current market, thus effecting an artificial distribution of profits, or (b) in any way so arranges its financial relationships with another corporation as to assign to it a disproportionate share of net income or invested capital.

ART. 78. **When affiliated corporations may be required to make consolidated return.**—Whenever necessary to more equitably determine the invested capital or taxable income, the Commissioner of Internal Revenue may require corporations classed as affiliated under article 77 to furnish a consolidated return of net income and invested capital.

Where such consolidated return is required it may be made by any one or more of such corporations or by all of them acting jointly; but if such affiliated corporations, when requested to file such consolidated returns, neglect or refuse to do so, the Commissioner of Internal Revenue may cause an examination of the books of all such corporations to be made and a consolidated statement to be made from such examination. In cases where consolidated returns are accepted, the total tax will be computed in the first instance as a unit upon the basis of the consolidated return and will be assessed upon the respective affiliated corporations in such proportions as may be agreed among them. If no such agreement is made the tax will be assessed upon each such corporation in accordance with the net income and invested capital properly assignable to it.

Assessment and Collection

ART. 79. **Assessment and collection governed by income tax regulations.**—All excess profits taxes to which any taxpayer is subject shall be assessed and collected at the same times and in the same manner as provided with respect to income taxes in the income tax regulations in so far as the same are applicable.

DANIEL C. ROPER,
Commissioner of Internal Revenue.

Approved:

W. G. MCADOO,
Secretary of the Treasury.

War Excess Profits Tax Law

Title II of the War Revenue Act of October 3, 1917

SEC. 200. That when used in this title— **Definitions**

The term "corporation" includes joint-stock companies or associations and insurance companies; **Corporation**

The term "domestic" means created under the law of the United States, or of any State, Territory, or District thereof, and the term "foreign" means created under the law of any other possession of the United States or of any foreign country or government; **Domestic** **Foreign**

The term "United States" means only the States, the Territories of Alaska and Hawaii, and the District of Columbia; **United States**

The term "taxable year" means the twelve months ending December thirty-first, excepting in the case of a corporation or partnership which has fixed its own fiscal year, in which case it means such fiscal year. The first taxable year shall be the year ending December thirty-first, nineteen hundred and seventeen, except that in the case of a corporation or partnership which has fixed its own fiscal year, it shall be the fiscal year ending during the calendar year nineteen hundred and seventeen. If a corporation or partnership, prior to March first, nineteen hundred and eighteen, makes a return covering its own fiscal year, and includes therein the income received during that part of the fiscal year falling within the calendar year nineteen hundred and sixteen, the tax for such taxable year shall be that proportion of the tax computed upon the net income during such full fiscal year which the time from January first, nineteen hundred and seventeen, to the end of such fiscal year bears to the full fiscal year; and **Taxable Year** **First Taxable Year**

The term "prewar period" means the calendar years nineteen hundred and eleven, nineteen hundred and **Prewar Period**

twelve, and nineteen hundred and thirteen, or, if a corporation or partnership was not in existence or an individual was not engaged in a trade or business during the whole of such period, then as many of such years during the whole of which the corporation or partnership was in existence or the individual was engaged in the trade or business;

Trade Business

The terms "trade" and "business" include professions and occupations;

Net Income

The term "net income" means in the case of a foreign corporation or partnership or a nonresident alien individual, the net income received from sources within the United States.

Rates of Tax

SEC. 201. That in addition to the taxes under existing law and under this act there shall be levied, assessed, collected, and paid for each taxable year upon the income of every corporation, partnership, or individual, a tax (hereinafter in this title referred to as the tax) equal to the following percentages of the net income:

Twenty per centum of the amount of the net income in excess of the deduction (determined as hereinafter provided) and not in excess of fifteen per centum of the invested capital for the taxable year;

Twenty-five per centum of the amount of the net income in excess of fifteen per centum and not in excess of twenty per centum of such capital;

Thirty-five per centum of the amount of the net income in excess of twenty per centum and not in excess of twenty-five per centum of such capital;

Forty-five per centum of the amount of the net income in excess of twenty-five per centum and not in excess of thirty-three per centum of such capital; and

Sixty per centum of the amount of the net income in excess of thirty-three per centum of such capital.

Trade or Business of Corporation or Partnership

For the purpose of this title every corporation or partnership not exempt under the provisions of this section shall be deemed to be engaged in business, and all the trades and businesses in which it is engaged shall be treated as a single trade or business, and all its income from whatever source derived shall be deemed to be received from such trade or business.

Trades or Businesses Subject to Tax

This title shall apply to all trades or businesses of whatever description, whether continuously carried on or not, except—

Certain Employees Exempt

(a) In the case of officers and employees under the United States, or any State, Territory, or the District of Columbia, or any local subdivision thereof, the compensation or fees received by them as such officers or employees;

Corporations Exempt

(b) Corporations exempt from tax under the provisions of section eleven of Title I of such Act of September eighth, nineteen hundred and sixteen, as amended by this Act, and partnerships and individuals carrying on or doing the same business, or coming within the same description; and

Insurance Business Exempt

(c) Incomes derived from the business of life, health, and accident insurance combined in one policy issued on the weekly premium payment plan.

Foreign Concerns

SEC. 202. That the tax shall not be imposed in the case of the trade or business of a foreign corporation or partnership or a nonresident alien individual, the net income of which trade or business during the taxable year is less than $3,000.

Deduction Determined

SEC. 203. That for the purposes of this title the deduction shall be as follows, except as otherwise in this title provided—

(a) In the case of a domestic corporation, the sum of (1) an amount equal to the same percentage of the invested capital for the taxable year which the average amount of the annual net income of the trade or

business during the prewar period was of the invested capital for the prewar period (but not less than seven or more than nine per centum of the invested capital for the taxable year), and (2) $3,000;

(b) In the case of a domestic partnership or of a citizen or resident of the United States, the sum of (1) an amount equal to the same percentage of the invested capital for the taxable year which the average amount of the annual net income of the trade or business during the prewar period was of the invested capital for the prewar period (but not less than seven or more than nine per centum of the invested capital for the taxable year), and (2) $6,000;

(c) In the case of a foreign corporation or partnership or of a nonresident alien individual, an amount ascertained in the same manner as provided in subdivisions (a) and (b) without any exemption of $3,000 or $6,000;

(d) If the Secretary of the Treasury is unable satisfactorily to determine the average amount of the annual net income of the trade or business during the prewar period, the deduction shall be determined in the same manner as provided in section two hundred and five.

Deduction Determined, Concern not Operating During Prewar Period

SEC. 204. That if a corporation or partnership was not in existence, or an individual was not engaged in the trade or business, during the whole of any one calendar year during the prewar period, the deduction shall be an amount equal to eight per centum of the invested capital for the taxable year, plus in the case of a domestic corporation $3,000, and in the case of a domestic partnership or a citizen or resident of the United States $6,000.

A trade or business carried on by a corporation, partnership, or individual, although formally organized or reorganized on or after January second, nineteen hundred and thirteen, which is substantially a continuation of a trade or business carried on prior to

that date, shall, for the purposes of this title, be deemed to have been in existence prior to that date, and the net income and invested capital of its predecessor prior to that date shall be deemed to have been its net income and invested capital.

Deduction Determined, Concern having no Prewar Income or Subnormal Prewar Income

SEC. 205. (a) That if the Secretary of the Treasury, upon complaint finds either (1) that during the prewar period a domestic corporation or partnership, or a citizen or resident of the United States, had no net income from the trade or business, or (2) that during the prewar period the percentage, which the net income was of the invested capital, was low as compared with the percentage, which the net income during such period of representative corporations, partnerships, and individuals, engaged in a like or similar trade or business, was of their invested capital, then the deduction shall be the sum of (1) an amount equal to the same percentage of its invested capital for the taxable year which the average deduction (determined in the same manner as provided in section two hundred and three, without including the $3,000 or $6,000 therein referred to) for such year of representative corporations, partnerships, or individuals, engaged in a like or similar trade or business, is of their average invested capital for such year plus (2) in the case of a domestic corporation $3,000, and in the case of a domestic partnership or a citizen or resident of the United States $6,000.

Determination of Percentage

The percentage which the net income was of the invested capital in each trade or business shall be determined by the Commissioner of Internal Revenue, in accordance with regulations prescribed by him, with the approval of the Secretary of the Treasury. In the case of a corporation or partnership which has fixed its own fiscal year, the percentage determined by the calendar year ending during such fiscal year shall be used.

Claim for Abatement

(b) The tax shall be assessed upon the basis of the deduction determined as provided in section two hundred and three, but the taxpayer claiming the benefit of this section may at the time of making the return file a claim for abatement of the amount by which the tax so assessed exceeds a tax computed upon the basis of the deduction determined as provided in this section. In such event, collection of the part of the tax covered by such claim for abatement shall not be made until the claim is decided, but if in the judgment of the Commissioner of Internal Revenue, the interests of the United States would be jeopardized thereby he may require the claimant to give a bond in such amount and with such sureties as the commissioner may think wise to safeguard such interests, conditioned for the payment of any tax found to be due, with the interest thereon, and if such bond, satisfactory to the commissioner, is not given within such time as he prescribes, the full amount of tax assessed shall be collected and the amount overpaid, if any, shall upon final decision of the application be refunded as a tax erroneously or illegally collected.

Net Income Determined

SEC. 206. That for the purposes of this title the net income of a corporation shall be ascertained and returned (a) for the calendar years nineteen hundred and

Corporation

eleven and nineteen hundred and twelve upon the same basis and in the same manner as provided in section thirty-eight of the Act entitled "An Act to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes," approved August fifth, nineteen hundred and nine, except that income taxes paid by it within the year imposed by the authority of the United States shall be included; (b) for the calendar year ninteen hundred and thirteen upon the same basis and in the same manner as provided in section II of the Act entitled

"An Act to reduce tariff duties and to provide revenue for the Government, and for other purposes," approved October third, nineteen hundred and thirteen, except that income taxes paid by it within the year imposed by the authority of the United States shall be included, and except that the amounts received by it as dividends upon the stock or from the net earnings of other corporations, joint-stock companies or associations, or insurance companies, subject to the tax imposed by section II of such Act of October third, nineteen hundred and thirteen, shall be deducted; and (c) for the taxable year upon the same basis and in the same manner as provided in Title I of the Act entitled "An Act to increase the revenue, and for other purposes," approved September eighth, nineteen hundred and sixteen, as amended by this Act, except that the amounts received by it as dividends upon the stock or from the net earnings of other corporations, joint-stock companies or associations, or insurance companies, subject to the tax imposed by Title I of such Act of September eighth, nineteen hundred and sixteen, shall be deducted.

Partnerships and Individuals

The net income of a partnership or individual shall be ascertained and returned for the calendar years nineteen hundred and eleven, nineteen hundred and twelve, and nineteen hundred and thirteen, and for the taxable year, upon the same basis and in the same manner as provided in Title I of such Act of September eighth, nineteen hundred and sixteen, as amended by this Act, except that the credit allowed by subdivision (b) of section five of such Act shall be deducted. There shall be allowed (a) in the case of a domestic partnership the same deductions as allowed to individuals in subdivision (a) of section five of such Act of September eighth, nineteen hundred and sixteen, as amended by this Act; and (b) in the case of a foreign partnership the

same deductions as allowed to individuals in subdivision (a) of section six of such Act as amended by this Act.

Invested Capital

SEC. 207. That as used in this title, the term "invested capital" for any year means the average invested capital for the year, as defined and limited in this title, averaged monthly.

Monthly Average

Capital Excluded

As used in this title "invested capital" does not include stocks, bonds (other than obligations of the United States), or other assets, the income from which is not subject to the tax imposed by this title nor money or other property borrowed, and means subject to the above limitations:

Domestic Corporations and Partnerships

(a) In the case of a corporation or partnership: (1) Actual cash paid in, (2) the actual cash value of tangible property paid in other than cash, for stock or shares in such corporation or partnership, at the time of such payment (but in case such tangible property was paid in prior to January first, nineteen hundred and fourteen, the actual cash value of such property as of January first, nineteen hundred and fourteen, but in no case to exceed the par value of the original stock or shares specifically issued therefor), and (3) paid in or earned surplus and undivided profits used or employed in the business, exclusive of undivided profits earned during the taxable year: *Provided*, That (a) the actual cash value of patents and copyrights paid in for stock or shares in such corporation or partnership, at the time of such payment, shall be included as invested capital, but not to exceed the par value of such stock or shares at the time of such payment, and (b) the good will, trade-marks, trade brands, the franchise of a corporation or partnership, or other intangible property, shall be included as invested capital if the corporation or partnership made payment bona fide therefor specifically as such in cash or tangible property, the value of such good will, trade-

mark, trade brand, franchise, or intangible property, not to exceed the actual cash or actual cash value of the tangible property paid therefor at the time of such payment; but good will, trade-marks, trade brands, franchise of a corporation or partnership, or other intangible property, bona fide purchased, prior to March third, nineteen hundred and seventeen, for and with interest or shares in a partnership or for and with shares in the capital stock of a corporation (issued prior to March third, nineteen hundred and seventeen), in an amount not to exceed, on March third, nineteen hundred and seventeen, twenty per centum of the total interests or shares in the partnership or of the total shares of the capital stock of the corporation, shall be included in invested capital at a value not to exceed the actual cash value at the time of such purchase, and in case of issue of stock therefor not to exceed the value of such stock;

Citizens or Residents of the United States

(b) In the case of an individual, (1) actual cash paid into the trade or business, and (2) the actual cash value of tangible property paid into the trade or business, other than cash, at the time of such payment (but in case such tangible property was paid in prior to January first, nineteen hundred and fourteen, the actual cash value of such property as of January first, nineteen hundred and fourteen), and (3) the actual cash value of patents, copyrights, good will, trade-marks, trade brands, franchises, or other intangible property, paid into the trade or business, at the time of such payment, if payment was made therefor specifically as such in cash or tangible property, not to exceed the actual cash or actual cash value of the tangible property bona fide paid therefor at the time of such payment.

Foreign Concerns and Non-Resident Aliens

In the case of a foreign corporation or partnership or of a nonresident alien individual the term "invested capital" means that proportion of the entire invested

capital, as defined and limited in this title, which the net income from sources within the United States bears to the entire net income.

Reorganization, Consolidation, or Change of Ownership

SEC. 208. That in case of the reorganization, consolidation or change of ownership of a trade or business after March third, nineteen hundred and seventeen, if an interest or control in such trade or business of fifty per centum or more remains in control of the same persons, corporations, associations, partnerships, or any of them, then in ascertaining the invested capital of the trade or business no asset transferred or received from the prior trade or business shall be allowed a greater value than would have been allowed under this title in computing the invested capital of such prior trade or business if such asset had not been so transferred or received, unless such asset was paid for specifically as such, in cash or tangible property, and then not to exceed the actual cash or actual cash value of the tangible property paid therefor at the time of such payment.

Tax on Business Having no Capital or Nominal Capital

SEC. 209. That in the case of a trade or business having no invested capital or not more than a nominal capital there shall be levied, assessed, collected and paid, in addition to the taxes under existing law and under this Act, in lieu of the tax imposed by section two hundred and one, a tax equivalent to eight per centum of the net income of such trade or business in excess of the following deductions: In the case of a domestic corporation $3,000, and in the case of a domestic partnership or a citizen or resident of the United States $6,000; in the case of all other trades or business, no deduction.

Tax on Business Invested Capital not Determinable

SEC. 210. That if the Secretary of the Treasury is unable in any case satisfactorily to determine the invested capital. the amount of the deduction shall be the sum of (1) an amount equal to the same proportion of the net income of the trade or business received

during the taxable year as the proportion which the average deduction determined in the same manner as provided in section two hundred and three, without including the $3,000 or $6,000 therein referred to, for the same calendar year of representative corporations, partnerships, and individuals, engaged in a like or similar trade or business, bears to the total net income of the trade or business received by such corporations, partnerships, and individuals, plus (2) in the case of a domestic corporation $3,000, and in the case of a domestic partnership or a citizen or resident of the United States $6,000.

Determination by Commissioner

For the purpose of this section the proportion between the deduction and the net income in each trade or business shall be determined by the Commissioner of Internal Revenue in accordance with regulations prescribed by him, with the approval of the Secretary of the Treasury. In the case of a corporation or partnership which has fixed its own fiscal year, the proportion determined for the calendar year ending during such fiscal year shall be used.

Partnership Returns

SEC. 211. That every foreign partnership having a net income of $3,000 or more for the taxable year, and every domestic partnership having a net income of $6,000 or more for the taxable year, shall render a correct return of the income of the trade or business for the taxable year, setting forth specifically the gross income for such year, and the deductions allowed in this title. Such returns shall be rendered at the same time and in the same manner as is prescribed for income-tax returns under Title I of such Act of September eighth, nineteen hundred and sixteen, as amended by this Act.

SEC. 212. That all administrative, special, and general provisions of law, including the laws in relation to the assessment, remission, collection, and refund of

Administrative Provisions

internal-revenue taxes not heretofore specifically repealed, and not inconsistent with the provisions of this title are hereby extended and made applicable to all the provisions of this title and to the tax herein imposed, and all provisions of Title I of such Act of September eighth, nineteen hundred and sixteen, as amended by this Act, relating to returns and payment of the tax therein imposed, including penalties, are hereby made applicable to the tax imposed by this title.

Regulations

SEC. 213. That the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall make all necessary regulations for carrying out the provisions of this title, and may require any corporation, partnership, or individual, subject to the provisions of this title, to furnish him with such facts, data, and information as in his judgment are necessary to collect the tax imposed by this title.

Former Excess Profits Tax Repealed

SEC. 214. That Title II (section two hundred to two hundred and seven, inclusive) of the Act entitled "An Act to provide increased revenue to defray the expenses of the increased appropriations for the Army and Navy, and the extensions of fortifications, and for other purposes," approved March third, nineteen hundred and seventeen, is hereby repealed.

Any amount heretofore or hereafter paid on account of the tax imposed by such Title II, shall be credited toward the payment of the tax imposed by this title, and if the amount so paid exceeds the amount of such tax the excess shall be refunded as a tax erroneously or illegally collected.

Munitions Tax

Subdivision (1) of section three hundred and one of such Act of September eighth, nineteen hundred and sixteen, is hereby amended so that the rate of tax for the taxable year nineteen hundred and seventeen shall be ten per centum instead of twelve and one-half per centum, as therein provided.

Subdivision (2) of such section is hereby amended to read as follows:

"(2) This section shall cease to be of effect on and after January first, nineteen hundred and eighteen."

Title X.—Administrative Provisions

* * *

Administrative Provisions of Law Applicable

SEC. 1001. That all administrative, special, or stamp provisions of law, including the law relating to the assessment of taxes, so far as applicable, are hereby extended to and made a part of this Act, and every person, corporation, partnership, or association liable to any tax imposed by this Act, or for the collection thereof, shall keep such records and render, under oath, such statements and returns, and shall comply with such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may from time to time prescribe.

* * *

Collection of Taxes

SEC. 1003. That in all cases where the method of collecting the tax imposed by this Act is not specifically provided, the tax shall be collected in such manner as the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury may prescribe. All administrative and penalty provisions of Title VIII of this Act, in so far as applicable, shall apply to the collection of any tax which the Commissioner of Internal Revenue determines or prescribes shall be paid by stamp.

Penalty for Failure to Make Return

SEC. 1004. That whoever fails to make any return required by this Act or the regulations made under authority thereof within the time prescribed or who makes any false or fraudulent return, and whoever evades or attempts to evade any tax imposed by this

Act or fails to collect or truly to account for and pay over any such tax, shall be subject to a penalty of not more than $1,000, or to imprisonment for not more than one year, or both, at the discretion of the court, and in addition thereto a penalty of double the tax evaded, or not collected, or accounted for and paid over, to be assessed and collected in the same manner as taxes are assessed and collected, in any case in which the punishment is not otherwise specifically provided.

Regulations

SEC. 1005. That the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, is hereby authorized to make all needful rules and regulations for the enforcement of the provisions of this Act.

* * *

Fraction of Cent

SEC. 1008. That in the payment of any tax under this Act not payable by stamp a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to one cent.

Payment in Installments

SEC. 1009. That the Secretary of the Treasury, under rules and regulations prescribed by him, shall permit taxpayers liable to income and excess profits taxes to make payments in advance in installments or in whole of an amount not in excess of the estimated taxes which will be due from them, and upon determination of the taxes actually due any amount paid in excess shall be refunded as taxes erroneously collected: *Provided*, That when payment is made in installments at least one-fourth of such estimated tax shall be paid before the expiration of thirty days after the close of the taxable year, at least an additional one-fourth within two months after the close of the taxable year, at least an additional one-fourth within four months after the close of the taxable year, and the remainder of the tax due on or before the time

now fixed by law for such payment: *Provided further*, That the Secretary of the Treasury, under rules and regulations prescribed by him, may allow credit against such taxes so paid in advance of an amount not exceeding three per centum per annum calculated upon the amount so paid from the date of such payment to the date now fixed by law for such payment; but no such credit shall be allowed on payments in excess of taxes determined to be due, nor on payments made after the expiration of four and one-half months after the close of the taxable year. All penalties provided by existing law for failure to pay tax when due are hereby made applicable to any failure to pay the tax at the time or times required in this section.

Certificates of Indebtedness and Uncertified Checks Received in Payment of Taxes

SEC. 1010. That under rules and regulations prescribed by the Secretary of the Treasury, collectors of internal revenue may receive, at par and accrued interest, certificates of indebtedness issued under section six of the Act entitled "An Act to authorize an issue of bonds to meet expenditures for the national security and defense, and, for the purpose of assisting in the prosecution of the war, to extend credit to foreign governments, and for other purposes," approved April twenty-fourth, nineteen hundred and seventeen, and any subsequent Act or Acts, and uncertified checks in payment of income and excess profits taxes, during such time and under such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe; but if a check so received is not paid by the bank on which it is drawn the person by whom such check has been tendered shall remain liable for the payment of the tax and for all legal penalties and additions the same as if such check had not been tendered.

General Provisions

Refund of Tax Withheld

SEC. 1212. That any amount heretofore withheld by any withholding agent as required by Title I of such Act of September eighth, nineteen hundred and sixteen, on account of the tax imposed upon the income of any individual, a citizen or resident of the United States, for the calendar year nineteen hundred and seventeen, except in the cases covered by subdivision (c) of section nine of such Act, as amended by this Act, shall be released and paid over to such individual, and the entire tax upon the income of such individual for such year shall be assessed and collected in the manner prescribed by such Act as amended by this Act.

* * *

Provisions Deemed Separable

SEC. 1300. That if any clause, sentence, paragraph, or part of this Act shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of said Act, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

* * *

Effective Date of Act

SEC. 1302. That unless otherwise herein specially provided, this Act shall take effect on the day following its passage.

Approved October 3, 1917.

Effective October 4, 1917.

Index

END OF
TITLE